

6.3.89

MP 2235/88 in
OA 690/87

- 9 -

Present: Applicant in person.
None for the respondents.

Heard the applicant in person. The hearing of this case is expedited and it will be listed after serial 113 of today's cause list before Court No. II.

AB
(Amitav Banerji)
Chairman

23 X. 89
Present: Mrs Pankaj Verma, Adv. for applicant.

Arguments advanced by counsel for the applicant. To reserve on record

on P.H.

Dalip Singh
(I.K.RASGOTRA)
Member (A)

Answer
(P.K.KARTHA)
i/c - J

Present: Mrs Pankaj Verma. Adv. for applicant
Mrs Raj Kumar Chopra, Adv.
for Respondents

31.10.89

Arguments heard and concluded. Judgment reserved.

Dalip Singh
(I.K.RASGOTRA)
Member (A)

Answer
(P.K.KARTHA)
VC (J)

10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. CA 690/87

Date of decision: 10.11.1989

Shri Malik Ram

....Applicant

Vs.

Union of India & Others

....Respondents

For the Applicant

....Mrs. Pankaj Verma,
Counsel

For the Respondents

....Mrs. Raj Kumari Chopra,
Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. I.K. BASGOTRA, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? *yes*
2. To be referred to the Reporters or not? *yes*

(The Judgment of the Bench delivered by
Hon'ble Mr. I.K. Rasgotra, Administrative
Member)

The applicant filed this application in this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 challenging the impugned order dated 20/23.6.1986 whereby the penalty of dismissal from service was imposed on him after holding an inquiry in accordance with the provisions of the CCS(CCA) Rules, 1965. The appeal filed by him against the impugned order of dismissal was also rejected by order dated 31.3.1987.

2. We have heard the learned counsel of both parties and have perused the records of the case carefully. The learned counsel of the applicant states that the case of the applicant is being defended with the help of Delhi Legal Aid and Advisory Board as the applicant is an indigent person. The charges mentioned in the charge-sheet issued to him were the following:-

(i) On 9.7.65 while working as Postman, Onkar Nagar P.O. Delhi, the applicant was ordered by the SPM to be deployed independently in Beat No.13 in place of Shri Satbir Singh, Postman, who was deployed as a Sorter in leave arrangement. The applicant refused to note down the order in question which resulted in dislocation of work.

(ii) The applicant managed to lift the attendance register lying on the table of Delivery Clerk and struck/his initial by drawing a line. By doing so, he ^{off} ~~had~~ not only destroyed an evidence showing his presence in the office, but also tampered with the official record unauthorisedly.

(iii) Immediately after having struck the signature off the attendance register, the applicant slipped away from the office without leave or any information.

3. The Inquiry Officer came to the conclusion that the charges (i) and (iii) were established while charge No.(ii) was also proved with suspicion. The Disciplinary Authority disagreed with the reasons given by the Inquiry Officer with regard to Charge No.(ii) and held that it also has been fully proved. As regards the penalty, he observed that the work in the Post Office is operational and that refusal of order

in the operational field may lead to any consequences. It has not only dislocated the work, but also fostered indiscipline in the Post Office. According to him, such a misconduct cannot be taken lightly. In view thereof, he felt that it warrants deterrent penalty and imposed the penalty of dismissal on the applicant.

4. In the appellate order dated 31.3.87, the articles of charges framed against the applicant have been reproduced and thereafter it has been observed that the applicant did not make a proper appeal. His appeal was addressed to SSPOs and only endorsed to DPS amongst 6 other addresses. It was received by the SSPOs on 18.8.86, whereas the punishment order was received by the applicant on 27.6.86. On this ground, his appeal was treated as time barred and rejected.

5. In the instant case, there is some evidence in support of the charges (i) and (iii) made against the applicant. In a case where there is some evidence to sustain the charge, this Tribunal cannot sit in appeal over the findings of the Disciplinary Authority. The impugned order dated 20/23.6.86 passed by the Disciplinary Authority cannot, therefore, be called in question on the ground that it is based on no evidence.

6. The question, however, arises whether the appeal made by the applicant was considered and disposed of in accordance with the provision of CCS(CCA) Rules, 1965. Rule 27(2) of the said rule provides inter alia that in the case of an appeal against an order imposing a major penalty, the Appellate Authority shall consider

(a) whether the procedure laid down in these Rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice; (b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe.

7. Thus Rule 27 requires that even if the appellant has not brought out any new points in the appeal, it is obligatory on the part of the Appellate Authority to discuss how there has been no procedural flaw or denial of opportunity of defence and that the findings of the Disciplinary Authority are based on evidence and are just. In DG, P&T's letter No.101/2/80-Disc.II dated 1st October, 1980, it has been observed that what is stated above is rarely done and that it has also created a feeling that the decisions of the Appellate Authority are arbitrary and summary in nature. Therefore, it has been stated in the said order that the Appellate Authorities should bear these in mind and issue the appellate orders in such a way that such unjust feeling or impressions are not created. This is possible only if the appellate authorities discuss thoroughly the following points mentioned in the said order:-

(i) The procedural aspects as well as the justness of the findings of the Disciplinary Authority with reference to the admissible evidence;

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(ii) a proper discussion of the points raised in the appeal; and

(iii) an objective assessment of the lapses on the part of the punished official with a view to coming to a decision that the charges had been established and that the penalty is appropriate/adequate and does not require to be either toned down or enhanced. (vide DG, P&T's instructions issued under Rule 27 of the CCS(GCA) Rules, 1965 reproduced in Swamy's Manual on Disciplinary Proceedings for Central Government Servants, pages 274-275).

8. In the instant case, the Appellate Authority did not comply with the requirements of Rule 27 and the guidelines laid down in the DG, P&T's letter mentioned above. The applicant has raised certain points alleging that the impugned order of dismissal suffers from various defects. These points have not been examined in the appellate order. The applicant being a low paid employee, it was not just and proper to have rejected his appeal on the technical ground that it was time barred.

9. There is also another aspect of the matter which has completely been ignored by the Appellate Authority. The applicant has served the Government as a Postman for about 23 years (from 23.7.63 to 23.6.86). The charges brought against him do not involve any moral turpitude. The effect of the impugned order of dismissal is that the Govt. servant has been deprived of the benefit of

proportionate pension and other retirement benefits due to him for the service rendered by him in the Government. This not only causes hardship to the Government servant in the evening of his life, but also causes misery to the members of his family.

10. The Supreme Court has held that in order to avoid the charge of vindictiveness, justice, equity and fair play demand that punishment must always be commensurate with the gravity of the offence charged. It is a well recognised principle of juris-prudence which permits penalty to be imposed for misconduct, that the penalty must be commensurate with the gravity of the offence charged. On this ground, the Supreme Court has modified the penalty in numerous cases (Vide Rama Kant Misra Vs. State of U.P., 1982 (3) SC 346; Bhagat Ram Vs. State of H.P., 1983(2) SCC 442 and Ashok Kumar Vs. Union of India and Another, JT 1988(1) SC 652). In Ashok Kumar's case, the Supreme Court has held that the imposition of penalty of termination of service for the alleged misconduct of unauthorised absence from duty was not warranted and, therefore, the Supreme Court modified the same to that of censure.

11. In the facts and circumstances of the present case, we remit the case of the applicant to the Appellate Authority to consider the matter afresh in the light of the observations made in this order. The Appellate Authority should consider

all the aspects of the case and pass a speaking order as expeditiously as possible, but ^d in no event later than 2 months from the date of communication of a copy of this order. The parties will bear their own costs.

Dulip
(I.K. RASGOTRA) 10/11/89
MEMBER (A)

Amrit
10/11/89
(P.K. KARTHA)
VICE CHAIRMAN (J)